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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,128	09/13/2000	Gerard Lang	05725.0632	7777

7590

08/13/2003

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EXAMINER

ELHILO, EISA B

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 08/13/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/600,128

Applicant(s)

LANG ET AL.

Examiner

Eisa B Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-36 and 38-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-36, 38-41, 43, 44, 49, 50 and 56-69 is/are rejected.
- 7) ☒ Claim(s) 42, 45-48 and 51-55 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

- 1 This action is responsive to the remarks filed on June 12, 2003.
- 2 Claims 32-36, 38-41, 43-44, 49-50 and 56-69 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Aaslyng (WO 97/19998) in view of de la Mettrie et al. (US 5,989,295), for the reasons set forth in the office action in paper No. 18, dated 01/02/2003.
- 3 Claims 42, 45-48 and 51-55 objected to for the reasons set forth in the office action in paper No. 18, dated 01/02/2003.

Response to Applicant's Arguments

- 4 Applicant's arguments filed 6/12/2003 have been fully considered but they are not persuasive.

With respect to the rejection based upon Aaslyng (WO' 998) in view of de la Mettrie (US' 295), Applicant argues that there is no motivation of suggestion to combine the references. The applicant also argues that there is no reasonable expectation of success for the proposed modification.

The examiner respectfully, disagrees with the above arguments because both references are in the same art of oxidation dyeing of keratin fibers. Also the primary reference of Aaslyng teaches and suggests the use of oxidation bases of heterocyclic compounds such as 2,6-diaminopyridine, wherein the compound listed among other dye precursors (oxidation bases) without limiting the dye precursors (see page 6, lines 19-35) and laccase enzyme as an oxidizing agent that generates hydrogen peroxide in the dyeing composition. Further, de la Mitre as a secondary reference teaches clearly the equivalence of heterocyclic oxidation bases and benzenic oxidation bases (see col. 7, lines 24-67) and also teaches the equivalence of heterocyclic couplers

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and benzenic couplers in the dyeing composition (see col. 8, lines 1-24) which are all used conventionally in oxidation dye. Furthermore, it is known to dye keratin fibers, and in particular human hair with dye compositions containing oxidation dyes in particular ortho or para-phenylenediamines, ortho or para-aminophenols and heterocyclic bases and couplers makes it possible to obtain a very wide range of colors (see col. 1, lines 15-35). Therefore, there is a motivation to combine of the references with a reasonable expectation of success in order to obtain a very wide range of colors, and, thus, a person of the ordinary skill in the art would expect such a composition to have similar properties to those claimed. Therefore, the prima facie case of obviousness has been established.

The Examiner advised the applicant to provide a data or showing to indicate that the claimed composition demonstrates superior and unexpected results over the composition of the closest prior art when apply to the keratin fibers.

5 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Elhilo
July 29, 2003



YOGENDRA N. GUPTA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700